PUBLIC PROSECUTOR

v.

SHARI BIN ABD. WAHAB

HIGH COURT, TAIPING DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CRIMINAL APPEAL NO. 51-189-92]
27 JUNE 1993

SENTENCE: Rape - Statutory rape - Section 376 Penal Code - Trial Court sentenced accused to 5 years with effect from date of sentence - Accused thought victim was above 15 years of age in view of victim's voluptuous body - Accused was above 50 years of age - Raton was spared - Section 289(c) Criminal Procedure Code.

This was an appeal by the public prosecutor against the inadequacy of sentence passed by the Sessions Court, Lenggong on the respondent who was convicted for statutory rape under s. 376 of the Penal Code. The respondent also filed an appeal against his conviction and sentence of 5 years imprisonment with effect from date of sentence.

Held:
The Court did not interfere with the sentence imposed by the Sessions Court Judge as it had not been shown to the satisfaction of the appellate Court that the sentence was manifestly excessive or inadequate or that in fixing the sentence, the lower Court had failed to adequately consider all the relevant factors either for or against the respondent.

[Conviction and sentence affirmed. Order accordingly].

Case referred to:
PP v. Teh Ah Cheng [1976] 2 MLJ187 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 289(c)
Penal Code, 376

For the public prosecutor - Murtazadi, DPP
For the respondent - Ravi; M/s. Xavier, Ravi & Sarjit Sidhu

JUDGMENT

Haji Abdul Malik bin Haji Ishak JC:
This is an appeal by the public prosecutor against the sentence passed by the Judge, Sessions Court, Lenggong, Perak, on the respondent who was charged for statutory rape under s. 376 of the Penal Code. The respondent also filed an appeal against his conviction and sentence. The charge against the appellant was as follows:

> Bahawa anda pada 16 October 1986 lebih kurang jam 8.00 pagi di rumah yang tidak bernombor di Kampong Bukit Sapi, Lenggong di dalam Daerah Hulu Perak, di dalam Negeri Perak, telah merogol seorang perempuan nama Zanariah bt. Idris yang berumor 13 tahun 9 bulan. Dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukumdi bawah s. 376 Kanun Kesiksaan.

At the conclusion of the trial, the respondent was found guilty under s. 376 of the Penal Code and he was duly convicted and sentenced to 5 years imprisonment with effect from date of sentence (18 June 1990). The respondent was spared the rotan as he was above 50 years of age (s. 289(c) of the Criminal Procedure Code). The respondent applied and was successfully granted a stay of execution and was placed on bail in the sum of RM10.000 with one surety.

The case came up for appeal on three occasions before it was finally heard and disposed of. On 2 December 1992 when the case came up for appeal, the respondent who was unrepresented, applied for and was granted an adjournment to enable his Counsel to be present. The learned Deputy Public Prosecutor, Cik Yong Zarida bte Sazali had no objection to the respondent's request for an adjournment and the appeal was adjourned for hearing to 12 March 1993. When the matter came up for hearing on 12 March 1993, the respondent was present and represented by Counsel, one Encik Ibrahim, with the same Deputy Public Prosecutor representing the public prosecutor. Encik Ibrahim applied for an adjournment as the respondent wanted to engage another Counsel. Again the same Deputy Public Prosecutor agreed to the adjournment and the appeal was consequently adjourned for hearing to 5 May 1993. Finally, when the case came up for hearing on 5 May 1993, the respondent was present and was represented by Counsel, one Encik Ravi, with Encik Murtazadi as the Deputy Public Prosecutor representing the public prosecutor. This time there was a sudden change to the attitude of both parties. The respondent decided to withdraw his appeal against the conviction and the sentence. The learned Deputy Public Prosecutor in turn decided to withdraw his appeal against

inadequacy of sentence and urged the Court to affirm the sentence of 5 years imprisonment with effect from 10 June 1990. The Court accordingly affirmed, the conviction of the respondent and as requested by the learned Deputy Public Prosecutor, the Court also affirmed the sentence of 5 years imprisonment with effect from 10 June 1990 on the respondent. So much for the background of the appeal.

The facts adduced by the prosecution and surprisingly admitted by the respondent in his defence are briefly, that on 16 October 1986 at about 8.00 a.m., in the unnumbered house as stated in the charge, the respondent (then aged 54 years), a Ko-ran teacher managed to persuade the victim (13 years 9 months) to undress (after the Ko-ran classes were over). The respondent then laid on top of the victim and in due course the victim was raped by the respondent. In his defence, the respondent admitted having sex with the victim approximately 4 to 5 times and that the respondent thought that the victim was above 15 years of age in view of the victim's voluptuous body. There was evidence that the victim was impregnated as a result of the rape.

The established principles and guidelines on sentencing are well documented in the journals, textbooks and legal essays of eminent authors. Foremost to consider when embarking on the appropriate sentence to impose would be the gravity of the offence, the need to emphasize public disapproval, the need to serve as a warning to others, the need to punish the offenders, the need to protect the public and most of all the need to serve the public interest. Being raped is a traumatic and harrowing experience for the innocent victim. In sexual offences, the fact that the offender is of an age where he can be regarded capable of protecting the victim instead of raping her, is an aggravating factor to be taken into account. In the instant appeal, the respondent as a Ko-ran teacher was expected to protect the young victim and he had abused that trust or confidence when he raped her. The sentence of 5 years imprisonment with effect from 10 June 1990 on the respondent would, to borrow the words of Eussoffee Abdoolcader J. (as he then was) in *PP v. Teh Cheng* [1976] 2 MLJ 187 be a lesson to him once he heard:

> ... the creaking of the prison doors closing shut behind him will afford the respondent ample opportunity to ponder on his folly in the company he keeps and give others of his ilk and equally gullible, cause to reflect on the desirability of the company they should or rather should not keep ...

I do not propose to interfere with the sentence imposed by the lower Court as it had not been shown to my satisfaction that in the circumstances of the instant appeal, the sentence was manifestly excessive or inadequate or that in fixing the sentence, the lower Court had failed to adequately consider all relevant factors either for or against the respondent. Even the learned Deputy Public Prosecutor urged me to affirm the sentence.

Order accordingly.